

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1107 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HARIJAN MOHANBHAI NATHABHAI

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/06/98

ORAL JUDGEMENT

(PER BHATT,J)

1. The appellant was accused No.1 who came to be tried along with three other persons in Sessions Case No.101/86 who is found guilty for the offence punishable under section 302 IPC and sentenced for Life imprisonment

and to pay fine of Rs.200/- and in default to undergo Simple Imprisonment for two months by the Ld.Addl.Sessions Judge, Mehsana by his judgment and order, dated 30.11.1991 which is under challenge before us in this appeal under section 374 of Cr.P.C. (Code).

2. The material facts may be stated at first so as to appreciate the merits of this appeal and challenge against it. An incident which occurred on 2.2.1986 at about 1.30 p.m. at village Kalri, Taluka Chanasma, Dist.Mehsana at Harijanwas culminated into murder of Mafa Tokar. In that the respondent-State, interalia, contended that there was exchange of hot words between the deceased and the original accused No.2 Harijan Pasabhai in respect of share in the skin of dead animals. Thereafter, the appellant-accused No.1 came near the venue of offence and gave a axe blow on the head of the deceased from behind. The original accused No.2 -Pasabhai had given a stick blow and original accused No.3--Dhanabhai and original Accused No.4--Sadabhai had injured the deceased by hurling brick-bats and stones. The incident was witnessed by the neighbours.

3. The deceased has sustained serious injuries who was initially taken to Public Health Centre at Bahecharaji by the neighbours. Initially he was examined by the Medical Officer at Public Health Centre at Bahecharaji from where he was shifted to Mehsana Civil Hospital. He was in unconscious condition. During the course of treatment in Civil Hospital at Mehsana he succumbed to injuries on 5.2.86.

4. Offence came to be registered initially under section 324 IPC against the appellant alone and later on the offence came to be registered under section 302 IPC on 6.2.86 against appellant and three other accused persons who came to be acquitted in the course of trial.

5. In order to substantiate the charge against the appellant and against original accused persons at Exh.4 framed by the Ld.Addl.Sessions Judge, Mehsana the prosecution has placed reliance on the oral evidence of following prosecution witnesses.

- (i) Harijan Mohanbhai Nathabhai,
- (ii) Harijan Pasabhai Nathabhai,
- (iii) Harijan Dhanabhai Sadhabhai,
- (iv) Harijan Sadhabhai Amrabhai

6. Upon the examination of prosecution witnesses, the Ld.Addl.Sessions Judge placed reliance on the

evidence of four eye witnesses and other proved circumstances and found the appellant-original accused No.1 guilty of offence punishable under section 302 of IPC and acquitted original accused Nos 2,3&4. The trial court has also acquitted all the accused persons from the charge under section 135 of Bombay Police Act. In short, only the appellant-original accused No.1 came to be convicted for the aforesaid offence punishable under section 302. The original accused No.3 passed away during the course of trial.

7. After having considered the entire evidence of prosecution and facts and circumstances emerging from the record of the present case and submissions raised before us, we have no hesitation in finding that the impugned judgment and order is quite justified. The trial court has rightly found the appellant-original accused No.1 before us guilty for the offence under section 302 IPC and has rightly sentenced to undergo Life Imprisonment.

8. The prosecution case accepted by the trial court is fully supported by four eye witnesses. Presence of eye witnesses is also quite natural as they are the neighbours. There was a quarrel and dispute between the deceased and accused Nos 1 & 2 in sharing the skin of dead animals. Accused persons and the deceased were residing in Harijanwas and all the eye witnesses are the residents of the said area who have fully supported the prosecution case.

9. Prosecution Witness No.1--Ratnabhai Ranchhodbhai had lodged a complaint upon the information and communication received from eye witness--Prosecution Witness No.2--Jivanbhai Jehabhai. The complaint is produced at Exh.51 which was lodged immediately at the earliest point of time before the police. The informant has supported the prosecution case. He has also stated in his evidence that all the four eye witnesses are the neighbours and residing in the same area where the incident occurred.

10. Prosecution Witness No.2--Jivanbhai who was examined at Exh.16 has in clear terms testified that after exchange of few hot words between deceased and accused No.2, the appellant-original accused No.1 came with an axe and gave axe blows on the head of the deceased from behind. The evidence of eye witness--Jivanbhai has remained totally unshaken. His presence was also quite natural and totally trustworthy. The trial court has rightly placed reliance on his evidence.

11. The Prosecution Witness No.3--Kuberbhai Narsinhbhai who was examined at Exh.17 has also fully supported the prosecution case in so far as the appellant is concerned. It is clearly stated by him that the appellant-original accused No.1--Mohanbhai gave axe blows on the head of the deceased from behind. Similarly, evidence of eye witness--Kankuben Balabhai--PW No.4 at Exh.18 fully supports the prosecution case. She has also clearly stated in her evidence that other witnesses who are the neighbours were present when the incident has occurred. So is the evidence of P.W5--Purshottambhai at Exh.19 which is remained totally unshaken.

12. It is clearly found from evidence that the prosecution case is fully relied on by four eye witnesses in so far as the culpability of the accused No.1-who is appellant before us is concerned. The FIR was lodged immediately at the earliest point of time by the informant--Ratnabhai Ranchhodbhai as he was informed by eye eyewitness Jivanbhai and other who had taken the deceased in critical condition to hospital for treatment. The medical evidence also fully supports the prosecution case. It has clearly borne out from the medical evidence that the deceased has sustained serious injury on the parietal region which was sufficient to cause death and which was possibly by the muddamal Article 1 which was produced by the accused and prosecution has collected by panchnama and produced at Exh.26 which is proved in the evidence of PW 8 Sureshbhai Mehta Exh.26. That the deceased has sustained serious injury on the head on account of axe-blow resulted into fracture of parietal bone and which culminated into death during the course of his treatment on 5.2.86. The deceased was found in unconscious all throughout. Medical evidence thus fully supports the case of prosecution and also it corroborates the evidence of eye witnesses.

13. There is no hesitation in holding that the deceased-Mafa Tokar who was aged about 75 had sustained serious fracture and injury on parietal region which had broken the skull and there was 7cm/1 cm deep injury which was possibly by operation of muddamal article 1 produced by original accused No.1. The account of eye witnesses narrated before the trial court is fully supported by the circumstances and corroborated by the FIR and medical evidence. It is also clear from the record and discussion in the judgment that the plea advanced by the accused persons was rightly rejected by the trial court. The material ingredients attracting the rigor of provisions of section 302 IPC for offence of murder have

been established without any shadow of doubt. Therefore the impugned judgment and order of the trial court in Sessions Case No.101/86 convicting the accused No.1-appellant herein for the offence under section 302 IPC requires no interference being quite justified. The appeal is therefore required to be dismissed being meritless and accordingly it is dismissed.

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